SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 779

TOM TUNSTALL,

Petitioner,

vs.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, OCEAN LODGE NO. 76, PORT NORFOLK LODGE NO. 775, W. M. MUNDEN AND NORFOLK SOUTHERN RAILWAY COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

CHARLES H. HOUSTON,
Counsel for Petitioner.

JOSEPH C. WADDY,
OLIVER W. HILL,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 779

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner Tom Tunstall respectfully prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered in the above-entitled cause January 10, 1944, which affirmed a decree of the United States District Court, Eastern District of Virginia, dismissing petitioner's complaint on motion to dismiss therein filed.

Opinions Below.

The opinion of the United States Circuit Court of Appeals for the Fourth Circuit, not yet reported, appears in the record at pages 55-59.

The opinion of the United States District Court, not reported, appears in the record at pages 36-48.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. Section 347).

Statute Involved.

The statute involved is the Railway Labor Act (Act of May 20, 1926 as amended by the Act of June 20, 1934 (45 U. S. C. Sections 151-164), which is printed in the appendix.

Statement.

Petitioner, a Negro locomotive fireman employed by the Norfolk Southern Railway Company (hereinafter called the Railroad), sued the Railroad and the Brotherhood of Locomotive Firemen and Enginemen, an international unincorporated labor union, certain of its subordinate lodges and individual members (hereinafter collectively called the Brotherhood) (R. 1-23), in two counts which in substance showed:

Count I.

Petitioner is a member of the craft or class of locomotive firemen employed on respondent Railroad. At all times material herein the Brotherhood has been the representative under the Railway Labor Act of the entire craft or class of locomotive firemen employed on said Railroad. As such it had a duty under the Act to represent the members of the craft impartially; but it refused to represent plaintiff impartially but used its position to obtain the more favorable job assignments for its own members (R. 3). Petitionr is barred from membership in the Brotherhood solely because he is a Negro (R. 2). On October 10, 1941 petitioner was employed as fireman on a preferred interstate passenger run. The Brotherhood refused to represent him impartially but in order to obtain the position for one of its members wrongfully used its position as representative under the Act to induce and force the Railroad to remove him from his job and replace him with one of its own members (R. 2-4). Wherefore he sought damages in amount of $25,000.00 against the Brotherhood (R. 4).

Count II.

Petitioner adopted the allegations of Count I, then showed that the Negro firemen constitute the minority firemen employed on the Railroad, the white firemen—all members of the Brotherhood—constitute the majority firemen; and that the Negro minority firemen and the white Brotherhood majority firemen constitute the entire craft or class of firemen on the Railroad. The Negro firemen are excluded from membership in the Brotherhood solely because of race (R. 6).

The white Brotherhood majority firemen have chosen the Brotherhood as the representative under the Railway Labor Act of the entire craft or class of firemen on the Railroad. The minority Negro firemen never chose the Brotherhood as their representative, but by virtue of their minority position have been forced to accept the Brotherhood as their representative under the Act (R. 6-7).

By accepting the position as representative under the Railway Labor Act of the entire craft or class of firemen on the Railroad, the Brotherhood became the statutory agent of the Negro minority firemen, under the duty of representing them fairly, impartially and in good faith, to give them reasonable notice and opportunity to be heard and a chance to vote on matters adversely affecting their interests, to make prompt report on actions taken affecting them, and to refrain from using its position as their statutory representative to discriminate against them in favor of itself and its members (R. 7). Nevertheless it has been persistently disloyal to the Negro minority members and has constantly sought to destroy their rights and drive them out of employment to obtain a monopoly of employment and the most favored jobs for its own members. It has always refused to give the Negro minority members notice, opportunity to be heard or vote,

or a report on matters affecting their interests, and has always refused to handle their grievances wherever there is an apparent conflict between them and its members, and has always refused to give them fair, impartial, honest and faithful representation under the Railway Labor Act (R. 7-8).

On March 28, 1940 the Brotherhood acting on each railroad involved as the representative under the Railway Labor Act of the entire craft or class of firemen, served notice on respondent Railroad and other railroads operating in the southeastern part of the United States, of its purpose to amend existing contracts governing firemen's rules, rates of pay and working conditions in such manner as would drive the Negro minority firemen completely out of service (R. 8; Appendix to Brief 51). On February 28, 1941, pursuant to said Notice, the Brotherhood acting in the premises as representative of the entire craft or class of firemen under the Act, and the railroads—including respondent Railroad—did enter into an agreement whereby the employment of Negro (nonpromotable) firemen and helpers on other than steam power should not exceed fifty per cent in each class of service in any seniority district, but not permitting their employment in any seniority district where they were not then working, and providing that until such percentage was reached all vacancies should be filled by white (promotable) firemen; and defining "nonpromotable" men as those not eligible for promotion under present rules and practices to the position of locomotive engineer. Under existing rules and practices only white firemen are eligible to promotion as engineers; Negro firemen are "non-promotables". (R. 8-9; Appendix to Brief 54). On May 23, 1941 the Brotherhood acting as representative under the Railway Labor Act of the entire craft or class of firemen and the respondent Railroad entered into a supplemental agreement.

specifically defining "non promotable firemen" as referring to Negro firemen only (R. 9; Appendix to Brief 61).

In serving the Notice of March 28, 1940, negotiating the Agreement of February 18, 1941 and the supplement of May 23, 1941, the Brotherhood gave the Negro firemen no notice, or opportunity to be heard or to vote thereon; nor was the existence of said agreement disclosed to them until the Brotherhood forced petitioner off his run by virtue thereof; but the Brotherhood maliciously contriving to secure a monopoly of employment and the most favorable jobs for its own members, acted in fraud of the rights of the Negro minority firemen and refused to represent them fairly and impartially as was its duty under the Railway Labor Act (R. 9-10).

On October 10, 1941 petitioner was serving to the satisfaction of the Railroad as fireman on an interstate passenger run, when the Brotherhood acting in the premises as representative under the Railway Labor Act of the entire craft or class of firemen, did wrongfully press said Agreement and supplement, and wrongfully induce and force the Railroad to remove petitioner and assign the job to the respondent Munden, a member of the Brotherhood; forcing petitioner to a more difficult and arduous job (R. 10-11).

Petitioner requested the Railroad to restore him to his job, but the Railroad asserted it was bound by the Railway Labor Act and helpless to do so unless the Brotherhood as his representative demanded same. Petitioner requested the Brotherhood as his representative to represent him before the Railroad for the restoration of his job but it refused to do so or even acknowledge his request (R. 11).

Petitioner sought a declaratory judgment declaring the relative rights and duties of the parties, and a declaration that the Brotherhood in accepting the position and acting

as the exclusive representative under the Railway Labor Act of the entire craft or class of firemen is under obligation to represent fairly and without discrimination all members of the craft or class, including the Negro minority firemen, non members of the Brotherhood; an injunction against the enforcement of the Agreement and supplement aforesaid; an injunction against the Brotherhood acting as his representative under the Railway Labor Act, so long as it refuses to represent him fairly and impartially; damages and restoration of his job (R. 12-13). Both the Railroad and the Brotherhood filed motions to dismiss (R. 25-35), which were sustained (R. 49-51).

Questions Presented.

1. Does the representative under the Railway Labor Act of an entire craft or class of firemen on a carrier have a duty to represent all members of the craft or class, including the minority firemen, fairly and impartially?

2. If there is such a duty, is there jurisdiction in the Federal Courts to declare the relative rights and duties between the representative and the members of the craft or class it represents under the Railway Labor Act, and to redress wrongs resulting from a violation of said duty?

Reasons for Granting the Writ.

1. The United States Circuit Court of Appeals held the "rights of plaintiff to the fair representation for purposes of collective bargaining . . . is *implicit* (italics ours) in the provisions of the National Railway Labor Act" but declined jurisdiction on what it considered controlling precedents established in this Court:

Brotherhood of Ry. and S. S. Clerks v. *U. T. S. E. A.* (decided December 6, 1943) — U. S. —;

Switchmen's Union v. *National Mediation Board* (decided November 22, 1943) 320 U. S. 297;

General Committee etc., v. *Southern Pacific Company* (decided November 22, 1943) 320 U. S. 338;
General Committee etc., v. *M. K. T. Railroad Co.* (decided November 22, 1943) 320 U. S. 323.

These decisions are not controlling and do not reach the questions here involved.

2. There is no administrative tribunal or agency established under the Railway Labor Act with jurisdiction to afford minority workers an opportunity to be heard and redress against wrongs and oppression from the majority workers who have seized the bargaining rights and grievance representation for the entire craft or class by virtue of the Railway Labor Act.

3. The uniformity of interstate operating conditions on carriers would be destroyed if definition of the rights and duties of the craft representative under the Railway Labor Act were to be left to the variations of state decisions.

4. The questions involved affect not only Negroes but all minority workers in the railway industry, and consequently the whole condition of interstate commerce throughout the nation.

5. Unless this controversy is decided by the peaceable processes of the Courts it will lead to industrial warfare and paralysis of the war effort.

WHEREFORE, petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fourth Circuit entered herein January 10, 1944.

Respectfully submitted,

CHARLES H. HOUSTON,
Attorney for petitioner.

JOSEPH C. WADDY,
OLIVER W. HILL,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

We refer to the foregoing petition for a citation of the opinion below, statement of grounds of jurisdiction, citation of statute involved and a summary statement of the case.

Specification of Error.

The United States Circuit Court of Appeals for the Fourth Circuit erred in holding there was no jurisdiction in the Federal Court to afford relief to petitioner on the case stated.

Summary of Argument.

1. The Railway Labor Act imposes a duty on the representative under the Railway Labor Act of an entire craft or class of workers to represent all members of the craft fairly and impartially.

2. The Federal Courts have jurisdiction to declare such duty and grant redress for its violation where the representative misrepresents the minority workers.

3. The decisions of this Court relied on by the United States Circuit Court of Appeals are not controlling authority against Federal jurisdiction in the premises.

4. The Norris-LaGuardia Act does not prevent injunctive relief on the case stated.

5. If the Railway Labor Act grants the "Representative" the unbridled power to destroy the minority's right to earn a living it violates the due process clause of the Fifth Amendment and is unconstitutional.

Argument.

The Railway Labor Act imposes a duty on the representative under the Railway Labor Act of an entire craft or class of workers to represent all members of the craft fairly and impartially.

The Railway Labor Act does not blueprint the powers and duties of the representative under the Act of an entire craft or class of workers. As far as the majority workers are concerned this is perhaps unimportant. They have the power to designate the representative in the first instance (Section 2—Fourth); and the power to change the representative at any time (Section 2—Ninth). To the minority worker, however, a definition of the powers and duties of the representative is a matter of economic life or death. *Ex hypothesi* the minority can neither designate the representative nor change it. The representative by force of the Act becomes the exclusive bargaining agent and grievance representative for the entire craft or class.

Virginian Ruy. v. *System Federation*, 300 U. S. 515, 81 L. Ed. 789, 57 S. Ct. 592 (1937).

The only way for the minority workers to shake off the representative is to resign from his job. Therefore unless there is a restraint imposed by the Act on the powers of the representative and unless duties are imposed on the representative for the protection of the minority worker, the Railway Labor Act has imposed on the minority worker, white as well as black, a condition of slavery in the teeth of the Thirteenth Amendment. It is no answer to say the minority worker is not forced to remain on his job but may resign at any time. A minority worker over 50 years of age with years of seniority cannot quit railroading and look for another occupation. Nor can Congress confer on the majority workers in a craft an unbridled power to force him

to do so, or to take away his job at their whim or to their own selfish advantage. The minority worker, just as much as the majority worker, has a vested property right in his job.

Truax v. *Raich*, 239 U. S. 33, 60 L. Ed. 131 (1915);
Estes v. *Union Terminal Co.*, 89 F. (2d) 768, 770 (1937);
Nord v. *Griffin*, 86 F. (2d) 481, 484 (1936);
Piercy v. *L. & N. Railroad Co.*, 198 Ky. 477, 484, 248 S. W. 1042, 33 A. L. R. 322 (1923).

The Act expressly recognizes that the contract of employment of each worker is an individual contract (Sec. 2—Eighth).

The fact is that the legislative history, the purposes and structure of the Act establish by plain intendment limitations on the power of the representative for the protection of the minority workers.

For discussion of the history of the Federal railway labor acts, see

1. The National Mediation Board, First Annual Report.
2. O. F. Traylor, Railroad Labor Legislation of 1934, 29 Ill. L. Rev. 789 (Feb. 1935).
3. Kent T. Healy, Economics of Transportation, Ch. XVI (1940).

The Act specifically prohibits making a worker agree to join or not to join a labor union as a condition of employment (Sec. 2).

The Act aims at the making and maintenance of agreements concerning rates of pay, rules and working conditions and settlement of disputes between carriers and their employees. The high contracting parties are the carriers on the one hand and the employees on the other; but they act through representatives (Sec. 2—Second).

The structure of the Act is laid upon the precepts of agency. The employees and the carriers are recognized as

the principals: the representative is recognized as agent. The representative is defined by the Act "as a person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees *to act for it or them*" (Sec. 1—Sixth; italics ours). Representatives shall be designated by the parties (Sec. 2—Third). Employees shall have the right to organize and bargain collectively through *representatives* of their own choosing (Sec. 2—Fourth). The majority workers *pro se* do not have the right to bargain for the minority workers. The majority workers merely have the right to determine who shall be *the representative of the craft or class*" (Sec. 2—Fourth; italics ours). Once chosen, the representative of the craft speaks with the authority of and is responsible to the entire craft; just as once a political election is determined, the successful candidate becomes the spokesman not of his party but of the entire governmental unit with duty of equal protection to every person therein: his opponents as well as his supporters.

Since the very theory of unit bargaining which the Act establishes for the railway industry on a craft or class basis is pinned to the tenets of agency, the very use of the term "representative" as defined in the Act incorporates the duties and responsibilities of an agent into the powers conferred on the representative under the Act. The duties of an agent for several principals to be fair and impartial, not to seek an advantage for itself at the expense of one or more of its principals, to make full disclosure of actions proposed and actions taken, and to be loyal not hostile are so firmly established in the law as to make citation unnecessary. They attach to the representative under the Railway Labor Act as firmly as if they had been put in the black letter text of the Act.

The "representative" under the Railway Labor Act does not represent the craft by any hundred per cent authority

delegated from the craft. The Negro minority members have never chosen the Brotherhood their representative. The Brotherhood acts in spite of them by virtue of authority and power over them delegated to it by Congress. This Court must assume that Congress acted within the framework of constitutional limitations and so interpret the Act if possible. Congress could act within constitutional limitations only if it made the representative the agent of the minority as well as of the majority of the craft or class. It could not make the minority workers economic serfs either to the majority workers or to the repersentative in its independent capacity without violating both the Fifth and Thirteenth Amendments.

The Statement of the case shows the particulars wherein the Brotherhood as representative under the Railway Labor Act of the entire craft or class of firemen on respondent Railroad has violated the implied duties to the Negro minority workers imposed on it by the Act.

II.

The Federal Courts have jurisdiction to declare such duty and grant redress for its violation where the representative misrepresents the minority workers.

We approach the problem of Federal jurisdiction in the premises by elimination. (1) This is not a representation dispute as in *Brotherhood of Ruy. & SS. Clerks* v. *U. T. S. E. A.* and *Switchmen's Union* v. *National Mediation Board, supra.* (2) It is not a jurisdictional dispute between two labor unions, as in *General Committee etc.* v. *Southern Pacific Company et al., supra.* (3) It is not a question of determining jurisdiction as between overlapping crafts, as in *General Committee etc.* v. *M. K. T. R. Company et al., supra.* (4) It does not involve a review of action by an administrative agency established under the Railway Labor

Act, as for example the National Mediation Board's ruling in *Brotherhood of Ry. & SS. Clerks* v. *U. T. S.-E. A., supra.* It is not a question of interpreting a contract; both the Agreement of February 18, 1941 and the supplement of May 23, 1941 are clear and nobody is in doubt as to the meaning thereof.

In the present case representation on the part of the Brotherhood under the Railway Labor Act of the entire craft or class of firemen on the respondent Railroad is conceded. The questions involved are not inter-craft but *intra-craft.* The basic complaint involves a dispute intra-craft between employees: between the white majority firemen, all members of the Brotherhood, and the Brotherhood on the one hand, and the Negro non-member minority firemen on the other.

No administrative machinery is provided within the Railway Labor Act for handling such disputes, so that there is no question of Congress having established any special exclusive procedural devices for notice, hearing and disposition. The jurisdiction of the National Railroad Adjustment Board is limited to disputes between employees and the carrier (Sec. 3—First (i)); similarly as to any system, group or regional boards established under the Act by mutual agreement between employees and the carriers (Sec. 3—Second). The jurisdiction of the National Mediation Board does not cover this field where no representation dispute is involved (Sec. 2—Ninth; Sec. 5). The arbitration machinery provided by the Act likewise is unavailable (Secs. 7-10 inclusive). In short, the Railway Labor Act has entombed the minority worker without hope of resurrection unless judicial relief is available.

It should be noted that Congress has established elaborate procedural safeguards, with full opportunity of notice and hearing, through the determination of the question who represents the craft or class (Sec. 2—Ninth).

Congress has established stringent, restrictive procedures regulating the procedures of collective bargaining (Secs. 2, 4-6).

Disputes between carriers and their employees have procedural channels marked out for them (Secs. 2, 3, 7-9).

But no procedure is provided for regulating intra-craft disputes between the majority workers and the representative of the entire craft or class on the one hand and the minority workers on the other. Congress has not employed "the traditional instruments of mediation, conciliation and arbitration" in this area. Cf. *General Committee etc.* v. *M. K. T. R. Co. supra*, 64 S. Ct. 146 at p. 150.

Respondents' position is that this *casus omissus* means Congress has imposed no limitations on the conduct of the bargaining agent. Our position is that Congress has limited the powers of the representative through the language of the Act itself which adopts the principles of agency, and that such limitations may be enforced through the general jurisdiction of the Federal Court, as set out in Judicial Code, Sec. 24 (8), 28 U. S. C. Sec. 41 (8).

The Federal Courts have taken jurisdiction to enforce the Act although power was not specifically granted to the Courts within the confines of the Act. For example, *Virginian Ruy.* v. *System Federation*, 300 U. S. 515, *supra* rests on no specific grant of power. *Nord* v. *Griffin*, 86 F. (2d) 481, (1936), cert. denied 300 U. S. 673, 81 L. Ed. 879, 57 S. Ct. 612 (1937) enjoined an award of the National Railroad Adjustment Board on the ground of violation of due process, in the teeth of the Act which limits court review of actions of the Adjustment Board to an enforcement suit by the winning party. (Sec. 3—First (pl)). The *M. K. T. R. Co.* case *supra* concedes that Sec. 2—Fourth is judicially enforcible without specific grant of jurisdiction. Congress cannot cut off the right of review by the courts where the question of the constitutionality of the Statute is raised.

See *Poindexter* v. *Greenhow*, 114 U. S. 270, 29 L. Ed. 185 (1885).

The *Virginian Rwy. Case* and *Nord* v. *Griffin* completely dispose of the contention of the Circuit Court of Appeals that there is no jurisdiction in the Federal courts to afford relief under the Act except where express provisions of the Act so indicate.

This Court has struck down "intolerable and unconstitutional interference with personal liberty and private property" by Congress in subjecting a minority to unrestrained control by the majority of an industry.

Carter v. *Carter Coal Co.*, 298 U. S. 238, 311; 80 L. Ed. 1160, 1189, (1936).

The same principles must apply to the present case if the minority workers are subjected by Congress to the unrestrained domination by the majority with no standards established. This would not only be a violation of the Fifth and Thirteenth Amendments, but would also amount to an unconstitutional delegation of legislative power. Congress cannot choke off judicial review of such a claim.

III.

The decisions of this Court relied on by the United States Circuit Court of Appeals are not controlling authority against Federal jurisdiction in the premises.

The argument under this point has been covered by what has gone before. It is our position that (1) the cases cited by the Circuit Court of Appeals (R. 56-57) relate to other problems and are governed by different considerations already discussed and (2) the concession by this Court in the *M. K. T. R. Co.* case *supra* that the right of the employees to organize, to be represented by representatives of their own choosing, and to bargain collectively is enforcible by judicial decree, must give the minority workers a judicially enforcible right to protect and advance the

right to organize, select representatives of their own choosing and bargain collectively (1) where the minority workers cannot organize with the majority workers because they are barred by race from the union to which the majority workers belong and which they have designated as the representative under the Railway Labor Act of the entire craft or class; (2) where it stands admitted of record that the representative refuses to give the minority workers any opportunity to participate in the formation of collective bargaining policy or strategy; and (3) where it stands admitted of record that the bargaining agent without notice or hearing to the minority has used its position to bargain collectively with the carrier to impair the minority workers' seniority rights and curtail their jobs to the advantage and profit of the majority workers, its own members.

If this right of organization and collective bargaining is conceded by this Court, then the right must appertain to every individual member of the craft, minority as well as majority member. Constitutional rights pertain to the individual and are not dependent on numbers.

McCabe v. *A. T. & S. F. R. Co.*, 235 U. S. 151, 161, 59 L. Ed. 169, 174 (1914)

Missouri ex rel. Gaines v. *Canada*, 305 U. S. 337, 83 L. Ed. 208 (1938)

Mitchell v. *U. S.*, 313 U. S. 80, 85 L. Ed. 1201 (1941)

The relief sought here is in furtherance of the rights of organization, representation and collective bargaining under the Act. We do not contend the Court can grant the minority membership in the Brotherhood, but it can force the Brotherhood to give the minority an opportunity to be heard on questions of collective bargaining policy whenever and wherever it acts as representative under the Railway Labor Act of the entire craft or class.

See Groner, J. in *Brotherhood of Ry. & S.S. Clerks* v. *U. T. S. E. A.*, 137 F. (2d) 817, 822 (1943).

IV.

The Norris-LaGuardia Act does not prevent injunctive relief on the case stated.

The interpretation and construction of the provisions of the Railway Labor Act are appropriate subjects of declaratory relief.

Borchard: Declaratory Judgments (2nd ed.) pp. 788-9.

The Norris-LaGuardia Act (29 U. S. ch. 6) does not apply to declaratory judgments.

Frankfurter and Greene, *The Labor Injunction*, p. 220 hence we lay aside the question of declaratory relief.

The Norris-LaGuardia Act does not prevent an injunction in furtherance of the right of organization, selection of representative, and collective bargaining under the Railway Labor Act.

Virginia Ruy. v. System Federation, supra.

See also Senate debate on the bill and statements of Senators Norris, Blaine and Wheeler, (75th Cong. Record vol. 75, part 5, pp. 4936-4937).

V.

If the Railway Labor Act Grants the "Representative" the unbridled power to destroy the minority's right to earn a living it violates the due process clause of the Fifth Amendment and is unconstitutional.

The argument under this point has already been made. Petitioner does not want to attack the Railway Labor Act. He recognizes and subscribes to its purposes within constitutional limitations and sincerely hopes it will not be so construed as to make an attack on its constitutionality mandatory in self-preservation.

Conclusion.

The issues in the present case involve the very structure of the collective bargaining process, the theory of representative government, and the rights of hundreds of thousands of workers. The case is one of first impression except for a decision of the Alabama Supreme Court in *Steele v. L & N R. Co.*, 16 So. (2d) 416 (January 22, 1944) on which application to this Court for certiorari will be made on or before March 29, 1944.

It is respectfully urged that this Court issue its writ of certiorari to review the judgment complained of.

Charles H. Houston,
Attorney for Petitioner.

Joseph C. Waddy,
Oliver W. Hill,
Of Counsel.

APPENDIX.

The Railway Labor Act (U. S. Code, Title 45, Ch. 8).

RAILROADS, EXPRESS AND SLEEPING CAR COMPANIES

§ 151. Definitions; "Railway Labor Act"

When used in this chapter and section 225 of Title 28 and for the purposes of said chapter and section—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to chapter 1 of Title 49, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": *Provided, however*, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso. The term "carrier" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to a carrier where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this chapter.

Third. The term "Mediation Board" means the National Mediation Board created by this chapter.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: *Provided, however*, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this chapter or by the orders of the Commission.

The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The term "district court" includes the district court of the United States for the District of Columbia; and the term "circuit court of appeals" includes the United States Court of Appeals for the District of Columbia.

This chapter may be cited as the "Railway Labor Act". (May 20, 1926, c. 347, § 1, 44 Stat. 577; June 7, 1934, c. 426, 48 Stat. 926; June 21, 1934, c. 691, § 1, 48 Stat. 1185; June 25, 1936, c. 804, 49 Stat. 1921; Aug. 13, 1940, c. 664, §§ 2, 3, 54 Stat. 785, 786.)

§ 151a. General purposes

The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions. (May 20, 1926, c. 347, § 2, 44 Stat. 577, as amended June 21, 1934, c. 691, § 2, 48 Stat. 1186.)

§ 152. General duties

First. Duty of carriers and employees to settle disputes

It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. Consideration of disputes by representatives

All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Designation of representatives

Representatives, for the purposes of this chapter, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this chapter need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Organization and collective bargaining; freedom from interference by carrier; assistance in organizing or maintaining organization by carrier forbidden; deduction of dues from wages forbidden

Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this chapter. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort

to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: *Provided*, That nothing in this chapter shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. Agreements to join or not to join labor organizations forbidden

No carriers, its officers, or agents shall require any person seeking employment to sign any contract or agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this chapter, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. Conference of representatives; time; place; private agreements

In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*,

That nothing in this chapter shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. Change in pay, rules or working conditions contrary to agreement or to section 156 forbidden

No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this chapter.

Eighth. Notices of manner of settlement of disputes; posting

Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this chapter, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. Disputes as to identity of representatives; designation by Mediation Board; secret elections

If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this chapter, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to

the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this chapter. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. Violations; prosecution and penalties

The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1,000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations

thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: *Provided*, That nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent. (May 20, 1926, c. 347, § 2, 44 Stat. 577; as amended June 21, 1934, c. 691, § 2, 48 Stat. 1186.).

§ 153. National Railroad Adjustment Board

First. Establishment; composition; powers and duties; divisions; hearings and awards

There is hereby established a Board, to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after June 21, 1934, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees; national in scope, as have been or may be organized in accordance with the provisions of section 152 of this chapter.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees or through an officer or officers designated for that purpose by such board, trustee or trustees or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after June 21, 1934, in case of any original appointment to office of a member of the Adjustment Board, or in case of a vacancy in any such office within thirty days after such vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (c) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (c) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the

claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member, investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with section 152 of this title and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

[fol. 18b] (g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train and yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, car men, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad shop laborers. This division shall consist of ten members, five of whom shall be selected by the

carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance of way men, clerical employees, freight handlers, express, station, and store employees, signal men, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged in transportation of passengers, or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however,* That final awards as to any such dispute must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph (n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this chapter for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board.

(q) All actions at law based upon the provisions of this section shall be begun within two years from the time the cause of action accrues under the award of the division of the Adjustment Board, and not after.

(r) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(s) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(t) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(u) The Adjustment Board shall meet within forty days after June 21, 1934 and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however*, That the chairmanship and vice-chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice-chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of a vacancy, such vacancy shall be filled for the unexpired terms by the selection of a successor from the same group.

(v) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each divi-

sion of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this chapter, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this chapter and disbursed by such agencies, employees, and officers.

(w) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

Second. Establishment of system, group or regional boards by voluntary agreement.

Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this chapter, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjust-

ment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board. May 20, 1926, c. 347, § 3, 44 Stat. 578, as amended June 21, 1934, c. 691, § 3, 48 Stat. 1189.

§ 154. National Mediation Board

First. Board of Mediation abolished; National Mediation Board established; composition; term of office; qualifications; salaries; removal

The Board of Mediation is abolished, effective thirty days from June 21, 1934, and the members, secretary, officers, assistants, employees, and agents thereof, in office upon June 21, 1934, shall continue to function and receive their salaries for a period of thirty days from such date in the same manner as though this chapter had not been passed. There is established, as an independent agency in the executive branch of the Government, a board to be known as the "National Mediation Board", to be composed of three members appointed by the President, by and with the advice and consent of the Senate, not more than two of whom shall be of the same political party. The terms of office of the members first appointed shall begin as soon as the members shall qualify, but not before thirty days after June 21, 1934, and expire, as designated by the President at the time of nomination, one on February 1, 1935, one on February 1, 1936, and one on February 1, 1937. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. Vacancies in the Board shall not impair the powers nor affect the duties of the Board nor of the remaining members of the Board. Two of the members in office shall constitute a quorum for the transaction of the business of the Board. Each member of the Board shall receive a

salary at the rate of $10,000 per annum, together with necessary traveling and subsistence expenses, or per diem allowance in lieu thereof, subject to the provisions of law applicable thereto, while away from the principal office of the Board on business required by this chapter. No person in the employment of or who is pecuniarily or otherwise interested in any organization of employees or any carrier shall enter upon the duties of or continue to be a member of the Board.

All cases referred to the Board of Mediation and unsettled on June 21, 1934, shall be handled to conclusion by the Mediation Board.

A member of the Board may be removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause.

Second. Chairman; principal office; delegation of powers; oaths; seal; report.

The Mediation Board shall annually designate a member to act as chairman. The Board shall maintain its principal office in the District of Columbia, but it may meet at any other place whenever it deems it necessary so to do. The Board may designate one or more of its members to exercise the functions of the Board in mediation proceedings. Each member of the Board shall have power to administer oaths and affirmations. The Board shall have a seal which shall be judicially noticed. The Board shall make an annual report to Congress.

Third. Appointment of experts and other employees; salaries of employees; expenditures.

The Mediation Board may (1) appoint such experts and assistants to act in a confidential capacity and, subject to the provisions of the civil-service laws, such other officers and employees as are essential to the effective transaction of the work of the Board; (2) in accordance with sections 661 to 674 of Title 5, fix the salaries of such experts, assistants, officers, and employees; and (3) make such expenditures (including expenditures for rent and personal services at the seat of government and elsewhere, for law

books, periodicals, and books of reference, and for printing and binding, and including expenditures for salaries and compensation, necessary traveling expenses and expenses actually incurred for subsistence, and other necessary expenses of the Mediation Board, Adjustment Board, Regional Adjustment Boards established under paragraph (w) of section 153 of this chapter, and boards of arbitration, in accordance with the provisions of this section and sections 153 and 157 of this chapter, respectively), as may be necessary for the execution of the functions vested in the Board, in the Adjustment Board and in the boards of arbitration, and as may be provided for by the Congress from time to time. All expenditures of the Board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

Fourth. Delegation of powers and duties.

The Mediation Board is hereby authorized by its order to assign, or refer, any portion of its work, business, or functions arising under this chapter or any other Act of Congress, or referred to it by Congress or either branch thereof, to an individual member of the Board or to an employee or employees of the Board to be designated by such order for action thereon, and by its order at any time to amend, modify, supplement, or rescind any such assignment or reference. All such orders shall take effect forthwith and remain in effect until otherwise ordered by the Board. In conformity with and subject to the order or orders of the Mediation Board in the premises, [and] such individual member of the Board or employee designated shall have power and authority to act as to any of said work, business, or functions so assigned or referred to him for action by the Board.

Fifth. Transfer of officers and employees of Board of Mediation; transfer of appropriation.

All officers and employees of the Board of Mediation (except the members thereof, whose offices are hereby abolished) whose services in the judgment of the Mediation Board are necessary to the efficient operation of the Board are hereby transferred to the Board, without change in classification or compensation; except that the Board

may provide for the adjustment of such classification or compensation to conform to the duties to which such officers and employees may be assigned.

All unexpended appropriations for the operation of the Board of Mediation that are available at the time of the abolition of the Board of Mediation shall be transferred to the Mediation Board and shall be available for its use for salaries and other authorized expenditures. (May 20, 1926, c. 347, § 4, 44 Stat. 579, as amended June 21, 1934, c. 691, § 4, 48 Stat. 1193.)

§ 155. Functions of Mediation Board

First. Disputes within jurisdiction of Mediation Board.

The parties, or either party, to a dispute between an employee or group of employees and a carrier may invoke the services of the Mediation Board in any of the following cases:

(a) A dispute concerning changes in rates of pay, rules, or working conditions not adjusted by the parties in conference.

(b) Any other dispute not referable to the National Railroad Adjustment Board and not adjusted in conference between the parties or where conferences are refused.

The Mediation Board may proffer its services in case any labor emergency is found by it to exist at any time.

In either event the said Board shall promptly put itself in communication with the parties to such controversy, and shall use its best efforts, by mediation, to bring them to agreement. If such efforts to bring about an amicable settlement through mediation shall be unsuccessful, the said Board shall at once endeavor as its final required action (except as provided in paragraph third of this section and in section 160 of this chapter) to induce the parties to submit their controversy to arbitration, in accordance with the provisions of this chapter.

If arbitration at the request of the Board shall be refused by one or both parties, the Board shall at once notify both parties in writing that its mediatory efforts have failed and for thirty days thereafter, unless in the

intervening period the parties agree to arbitration, or an emergency board shall be created under section 160 of this chapter, no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose.

Second. Interpretation of agreement

In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this chapter, either party to the said agreement, or both, may apply to the Mediation Board for an interpretation of the meaning or application of such agreement. The said Board shall upon receipt of such request notify the parties to the controversy, and after a hearing of both sides give its interpretation within thirty days.

Third. Duties of Board with respect to arbitration of disputes; arbitrators; acknowledgment of agreement; notice to arbitrators; reconvening of arbitrators; filing contracts with Board; custody of records and documents

The Mediation Board shall have the following duties with respect to the arbitration of disputes under section 157 of this chapter:

(a) On failure of the arbitrators named by the parties to agree on the remaining arbitrator or arbitrators within the time set by section 157 of this chapter, it shall be the duty of the Mediation Board to name such remaining arbitrator or arbitrators. It shall be the duty of the Board in naming such arbitrator or arbitrators to appoint only those whom the Board shall deem wholly disinterested in the controversy to be arbitrated and impartial and without bias as between the parties to such arbitration. Should, however, the Board name an arbitrator or arbitrators not so disinterested and impartial, then, upon proper investigation and presentation of the facts, the Board shall promptly remove such arbitrator.

If an arbitrator named by the Mediation Board, in accordance with the provisions of this chapter, shall be removed by such Board as provided by this chapter, or if such an arbitrator refuses or is unable to serve, it shall

be the duty of the Mediation Board, promptly, to select another arbitrator, in the same manner as provided in this chapter for an original appointment by the Mediation Board.

(b) Any member of the Mediation Board is authorized to take the acknowledgment of an agreement to arbitrate under this chapter. When so acknowledged, or when acknowledged by the parties before a notary public or the clerk of a district court or a circuit court of appeals of the United States, such agreement to arbitrate shall be delivered to a member of said Board or transmitted to said Board, to be filed in its office.

(c) When an agreement to arbitrate has been filed with the Mediation Board, or with one of its members, as provided by this section, and when the said Board has been furnished the names of the arbitrators chosen by the parties to the controversy it shall be the duty of the Board to cause a notice in writing to be served upon said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the Board of Arbitration, and advising them of the period within which, as provided by the agreement to arbitrate, they are empowered to name such arbitrator or arbitrators.

(d) Either party to an arbitration desiring the reconvening of a board of arbitration to pass upon any controversy arising over the meaning or application of an award may so notify the Mediation Board in writing, stating in such notice the question or questions to be submitted to such reconvened Board. The Mediation Board shall thereupon promptly communicate with the members of the Board of Arbitration, or a subcommittee of such Board appointed for such purpose pursuant to a provision in the agreement to arbitrate, and arrange for the reconvening of said Board of Arbitration or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the Board, or the subcommittee, will meet for hearings upon the matters in controversy to be submitted to it. No evidence other than that contained in the record

filed with the original award shall be received or considered by such reconvened Board or subcommittee, except such evidence as may be necessary to illustrate the interpretations suggested by the parties. If any member of the original Board is unable or unwilling to serve on such reconvened Board or subcommittee thereof, another arbitrator shall be named in the same manner and with the same powers and duties as such original arbitrator.

(e) Within sixty days after June 21, 1934 every carrier shall file with the Mediation Board a copy of each contract with its employees in effect on the 1st day of April, 1934, covering rates of pay, rules, and working conditions. If no contract with any craft or class of its employees has been entered into, the carrier shall file with the Mediation Board a statement of that fact including also a statement of the rates of pay, rules, and working conditions applicable in dealing with such craft or class. When any new contract is executed or change is made in an existing contract with any class or craft of its employees covering rates of pay, rules, or working conditions, or in those rates of pay, rules, and working conditions of employees not covered by contract, the carrier shall file the same with the Mediation Board within thirty days after such new contract or change in existing contract has been executed or rates of pay, rules, and working conditions have been made effective.

(f) The Mediation Board shall be the custodian of all papers and documents heretofore filed with or transferred to the Board of Mediation bearing upon the settlement, adjustment, or determination of disputes between carriers and their employees or upon mediation or arbitration proceedings held under or pursuant to the provisions of any Act of Congress in respect thereto; and the President is authorized to designate a custodian of the records and property of the Board of Mediation until the transfer and delivery of such records to the Mediation Board and to require the transfer and delivery to the Mediation Board of any and all such papers and documents filed with it or in its possession. (May 20, 1926, c. 347, § 5, 44 Stat. 580, as amended June 21, 1934, c. 691, § 5, 48 Stat. 1195.)

§ 156. Procedure in changing rates of pay, rules, and working conditions

Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by section 155 of this chapter, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board. (May 20, 1926, c. 347, § 6, 44 Stat. 582, as amended June 21, 1934, c. 691, § 6, 48 Stat. 1197.)

§ 157. Arbitration

First. Submission of controversy to arbitration. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may, by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: *Provided, however*, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this chapter or otherwise.

Second. Manner of selecting board of arbitration. Such board of arbitration shall be chosen in the following manner:

(a) In the case of a board of three the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name one arbitrator; the two arbitrators thus chosen shall select a third arbitrator. If the arbitrators chosen by the parties shall fail to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Mediation Board.

(b) In the case of a board of six the carrier or carriers and the representatives of the employees, parties respectively to the agreement to arbitrate, shall each name two arbitrators; the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators. If the arbitrators chosen by the parties shall fail to name the two arbitrators within fifteen days after their first meeting, the said two arbitrators, or as many of them as have not been named, shall be named by the Mediation Board.

Third. Board of arbitration; organization; compensation; procedure. (a) Notice of selection or failure to select arbitrators. When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators, they shall notify the Mediation Board; and, in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this chapter, they shall, at the expiration of such period, notify the Mediation Board of the arbitrators selected, if any, or of their failure to make or to complete such selection.

(b) Organization of board; procedure. The board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings: *Provided, however*, That the board of arbitration shall be bound to give the parties to the controversy a full and fair hearing, which shall include an opportunity to present evidence in support of their claims, and an opportunity to present their case in person, by counsel, or by other representative as they may respectively elect.

(c) Duty to reconvene; questions considered. Upon notice from the Mediation Board that the parties, or either party, to an arbitration desire the reconvening of the board

of arbitration (or a subcommittee of such board of arbitration appointed for such purpose pursuant to the agreement to arbitrate) to pass upon any controversy over the meaning or application of their award, the board, or its subcommittee, shall at once reconvene. No question other than, or in addition to, the questions relating to the meaning or application of the award, submitted by the party or parties in writing, shall be considered by the reconvened board of arbitration or its subcommittee.

Such rulings shall be acknowledged by such board or subcommittee thereof in the same manner, and filed in the same district court clerk's office, as the original award and become a part thereof.

(d) Competency of arbitrators. No arbitrator, except those chosen by the Mediation Board, shall be incompetent to act as an arbitrator because of his interest in the controversy to be arbitrated, or because of his connection with or partiality to either of the parties to the arbitration.

(e) Compensation and expenses. Each member of any board of arbitration created under the provisions of this chapter named by either party to the arbitration shall be compensated by the party naming him. Each arbitrator selected by the arbitrators or named by the Mediation Board shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, while serving as an arbitrator.

(f) Award; disposition of original and copies. The board of arbitration shall furnish a certified copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the evidence taken at the hearings, certified under the hands of at least a majority of the arbitrators, to the clerk of the district court of the United States for the district wherein the controversy arose or the arbitration is entered into, to be filed in said clerk's office as hereinafter provided. The said board shall also furnish a certified copy of its award, and the papers and proceedings, including testimony relating thereto, to the Mediation Board,

to be filed in its office; and in addition a certified copy of its award shall be filed in the office of the Interstate Commerce Commission: *Provided, however,* That such award shall not be construed to diminish or extinguish any of the powers or duties of the Interstate Commerce Commission, under chapter 1 of Title 49.

(g) Compensation of assistants to board of arbitration; expenses; quarters. A board of arbitration may, subject to the approval of the Mediation Board, employ and fix the compensation of such assistants as it deems necessary in carrying on the arbitration proceedings. The compensation of such employees, together with their necessary traveling expenses and expenses actually incurred for subsistence, while so employed, and the necessary expenses of boards of arbitration, shall be paid by the Mediation Board.

Whenever practicable, the board shall be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may conduct its proceedings or deliberations.

(h) Testimony before board; oaths; attendance of witnesses; production of documents; subpoenas; compulsion of witnesses; fees. All testimony before said board shall be given under oath or affirmation, and any member of the board shall have the power to administer oaths or affirmations. The board of arbitration, or any member thereof, shall have the power to require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as may be deemed by the board of arbitration material to a just determination of the matters submitted to its arbitration, and may for that purpose request the clerk of the district court of the United States for the district wherein said arbitration is being conducted to issue the necessary subpoenas, and upon such request the said clerk or his duly authorized deputy shall be, and hereby is, authorized, and it shall be his duty, to issue such subpoenas. In the event of the failure of any person to comply with any such subpoena, or in the event of the contumacy of any witness appearing before the board of arbitration, the board may invoke the aid of the United States courts to compel witnesses to attend and testify and to pro-

duce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as provided for in chapter 1 of Title 49.

Any witness appearing before a board of arbitration shall receive the same fees and mileage as witnesses in courts of the United States, to be paid by the party securing the subpoena. (May 20, 1926, c. 347, § 7, 44 Stat. 582, as amended June 21, 1934, c. 691, § 7, 48 Stat. 1197.)

§ 158. Agreement to arbitrate; form and contents; signatures and acknowledgment; revocation. The agreement to arbitrate—

(a) Shall be in writing;

(b) Shall stipulate that the arbitration is had under the provisions of this chapter;

(c) Shall state whether the board of arbitration is to consist of three or of six members;

(d) Shall be signed by the duly accredited representatives of the carrier or carriers and the employees, parties respectively to the agreement to arbitrate, and shall be acknowledged by said parties before a notary public, the clerk of a district court or circuit court of appeals of the United States, or before a member of the Mediation Board and, when so acknowledged, shall be filed in the office of the Mediation Board;

(e) Shall state specifically the questions to be submitted to the said board for decision; and that, in its award or awards, the said board shall confine itself strictly to decisions as to the questions so specifically submitted to it;

(f) Shall provide that the questions, or any one or more of them, submitted by the parties to the board of arbitration may be withdrawn from arbitration on notice to that effect signed by the duly accredited representatives of all the parties and served on the board of arbitration;

(g) Shall stipulate that the signatures of a majority of said board of arbitration affixed to their award shall be competent to constitute a valid and binding award;

(h) Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board (as provided for in the agreement) within which the said board shall commence its hearings;

(i) Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That the parties may agree at any time upon an extension of this period;

(j) Shall provide for the date from which the award shall become effective and shall fix the period during which the award shall continue in force;

(k) Shall provide that the award of the board of arbitration and the evidence of the proceedings before the board relating thereto, when certified under the hands of at least a majority of the arbitrators, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arose or the arbitration was entered into, which district shall be designated in the agreement; and, when so filed, such award and proceedings shall constitute the full and complete record of the arbitration;

(l) Shall provide that the award, when so filed, shall be final and conclusive upon the parties as to the facts determined by said award and as to the merits of the controversy decided;

(m) Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling, when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award; and

(n) Shall provide that the respective parties to the award will each faithfully execute the same.

The said agreement to arbitrate, when properly signed and acknowledged as herein provided, shall not be revoked

by a party to such agreement: *Provided, however,* That such agreement to arbitrate may at any time be revoked and canceled by the written agreement of both parties, signed by their duly accredited representatives, and (if no board of arbitration has yet been constituted under the agreement) delivered to the Mediation Board or any member thereof; or, if the board of arbitration has been constituted as provided by this chapter, delivered to such board of arbitration. (May 20, 1926, c. 347, § 8, 44 Stat. 584, as amended June 21, 1934, c. 691, § 7, 48 Stat. 1197.)

§ 159. Award and judgment thereon; effect of chapter on individual employee

First. Filing of award. The award of a board of arbitration, having been acknowledged as herein provided, shall be filed in the clerk's office of the district court designated in the agreement to arbitrate.

Second. Conclusiveness of award; judgment. An award acknowledged and filed as herein provided shall be conclusive on the parties as to the merits and facts of the controversy submitted to arbitration, and unless, within ten days after the filing of the award, a petition to impeach the award, on the grounds hereinafter set forth, shall be filed in the clerk's office of the court in which the award has been filed, the court shall enter judgment on the award, which judgment shall be final and conclusive on the parties.

Third. Impeachment of award; grounds. Such petition for the impeachment or contesting of any award so filed shall be entertained by the court only on one or more of the following grounds:

(a) That the award plainly does not conform to the substantive requirements laid down by this chapter for such awards, or that the proceedings were not substantially in conformity with this chapter;

(b) That the award does not conform, nor confine itself, to the stipulations of the agreement to arbitrate; or

(c) That a member of the board of arbitration rendering the award was guilty of fraud or corruption; or that a

party to the arbitration practiced fraud or corruption which fraud or corruption affected the result of the arbitration: *Provided, however,* That no court shall entertain any such petition on the ground that an award is invalid for uncertainty; in such case the proper remedy shall be a submission of such award to a reconvened board, or subcommittee thereof, for interpretation, as provided by this chapter: *Provided, further,* That an award contested as herein provided shall be construed liberally by the court, with a view to favoring its validity, and that no award shall be set aside for trivial irregularity or clerical error, going only to form and not to substance.

Fourth. Effect of partial invalidity of award. If the court shall determine that a part of the award is invalid on some ground or grounds designated in this section as a ground for invalidity, but shall determine that a part of the award is valid, the court shall set aside the entire award: *Provided, however,* That, if the parties shall agree thereto, and if such valid and invalid parts are separable, the court shall set aside the invalid part, and order judgment to stand as to the valid part.

Fifth. Appeal; record. At the expiration of ten days from the decision of the district court upon the petition filed as aforesaid, final judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said petition and to be decided.

Sixth. Finality of decision of circuit court of appeals. The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

Seventh. Judgment where petitioner's contentions are sustained. If the petitioner's contentions are finally sustained, judgment shall be entered setting aside the award

in whole or, if the parties so agree, in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Eighth. Duty of employee to render service without consent; right to quit. Nothing in this chapter shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this chapter be construed to make the quitting of his labor or service by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent. (May 20, 1926, c. 347, § 9, 44 Stat. 585.)

§ 160. Emergency Board. If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter, and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable; *Provided, however*, That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation.

There is hereby authorized to be appropriated such sums as may be necessary for the expenses of such board, including the compensation and the necessary traveling expenses and expenses actually incurred for subsistence, of the members of the board. All expenditures of the board shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman.

After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose. (May 20, 1926, c. 347, § 10, 44 Stat. 586, as amended June 21, 1934, c. 691, § 7, 48 Stat. 1197.)

§ 161. Effect of partial invalidity of chapter.

If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. All Acts or parts of Acts inconsistent with the provisions of this chapter are repealed. (May 20, 1926, c. 347, § 11, 44 Stat. 587; June 21, 1934, c. 691, § 8, 48 Stat. 1197.)

§ 162. Appropriation. There is hereby authorized to be appropriated such sums as may be necessary for expenditure by the Mediation Board in carrying out the provisions of this chapter. (May 20, 1926, c. 347, § 12, 44 Stat. 587, as amended June 21, 1934, c. 691, § 7, 48 Stat. 1197.)

§ 163. Repeal of prior legislation; exception. Chapters 6 and 7 of this title, providing for mediation, conciliation, and arbitration, and all Acts and parts of Acts in conflict with the provisions of this chapter are repealed, except that the members, secretary, officers, employees, and agents of the Railroad Labor Board, in office on May 20, 1926, shall receive their salaries for a period of 30 days from such date, in the same manner as though this chapter had not been passed. (May 20, 1926, c. 347, § 14, 44 Stat. 587.)

§ 164. Repealed. Oct. 16, 1940, c. 851, § 4, 54 Stat. 1111.

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

GENERAL GRIEVANCE COMMITTEE

RAILWAY

March 28, 1940.

Mr.

Dear Sir:

This is to advise that the employees of the Railway engaged in service, represented and legislated for by the Brotherhood of Locomotive Firemen and Enginemen, have approved the presentation of request for the establishment of rules governing the employment and assignment of locomotive firemen and helpers, as follows:

1. Only promotable men will be employed for service as locomotive firemen or for service as helpers on other than steam power.

2. When new runs or jobs are established in any service, only promotable firemen or helpers will be assigned to them.

3. When permanent vacancies occur or established runs or jobs in any service, only promotable firemen or helpers will be assigned to them.

4. It is understood that promotable firemen or helpers on other than steam power are those in line for promotion under the present rules and practices to the position of locomotive engineer.

In accordance with the terms of our present agreement, and in conformity with the provisions of the Railway Labor Act, kindly accept this as the required official notice of our desire to revise the agreement to the extent indicated.

The same request is this date being presented on the following railroads:

Atlantic Coast Line
Jacksonville Terminal
Atlanta Joint Terminal
Atlanta & West Point
Western Railroad of Ala.
Central of Georgia
Frankfort & Cincinnati
Georgia Railroad
Georgia & Florida
Gulf, Mobile & Northern
Louisville & Nashville
Memphis Union Station Co.
Louisiana and Arkansas
Mobile and Ohio, Columbus & Greenville
Norfolk and Portsmouth Belt
Norfolk & Southern
Norfolk & Western
Seaboard Airline
Southern Railroad System
St. Louis-San Francisco
Tennessee Central

It is our request that all lines or divisions of railway controlled by the _____ Railway shall be included in settlement of this proposal and that any agreement reached shall apply to all alike on such lines or divisions.

It is desired that reply to our proposal be made in writing to the undersigned on or before April 7, concurring therein, or fixing a date within 30 days from date of this letter when conference with you may be had for the purpose of discussing the proposal. In event settlement is not reached in

conference, it is suggested that this railroad join with others in authorizing a conference committee to represent them in dealing with this subject. In submitting this proposal we desire that it be understood that all rules and conditions in our agreements not specifically affected by our proposition shall remain unchanged subject to change in the future by negotiations between the proper representatives as has been the same in the past.

Yours truly,

(Signed) GENERAL CHAIRMAN.

AGREEMENT

Between the Southeastern Carriers' Conference Committee Representing the

Atlantic Coast Line Railway Company
Atlanta & West Point Railroad Company and Western Railway of Alabama
Atlanta Joint Terminals
Central of Georgia Railroad Company
Georgia Railroad
Jacksonville Terminal Company
Louisville & Nashville Railroad Company
Norfolk & Portsmouth Belt Line Railroad Company
Norfolk Southern Railroad Company
St. Louis-San Francisco Railway Company
Seaboard Air Line Railway Company
Southern Railway Company (including State University Railroad Company and Northern Alabama Railway Company)
The Cincinnati, New Orleans and Texas Pacific Railway Company
The Alabama Great Southern Railroad Company (including Woodstock and Blacton Railway Company and Belt Railway Company of Chattanooga)
New Orleans and Northeastern Railroad Company
New Orleans Terminal Company
Georgia Southern and Florida Railway Company
St. Johns River Terminal Company
Harriman and Northeastern Railroad Company
Cincinnati, Burnside and Cumberland River Railway Company
Tennessee Central Railway Company

and the

Brotherhood of Locomotive Firemen and Enginemen

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(1) On each railroad party hereto the proportion of non-promotable firemen, and helpers on other than steam power,

shall not exceed fifty per cent in each class of service established as such on each individual carrier. This agreement does not sanction the employment of non-promotable men on any seniority district on which non-promotable men are not now employed.

(2) The above percentage shall be reached as follows:

(a) Until such percentage is reached on any seniority district only promotable men will be hired.

(b) Until such percentage is reached on any seniority district all new runs and all vacancies created by death, dismissal, resignation or disqualification shall be filled by promotable men. A change in the starting time of the same run or job will not be considered as constituting a new run.

(3) Except as provided in items (2) (a) and (2) (b) men now holding seniority as firemen, or helpers on other than steam power, shall be permitted to exercise seniority in accordance with their seniority and the rules of their respective schedules.

(4) It is understood that promotable firemen, or helpers on other than steam power, are those who are in line for promotion under the present rules and practices to the position of locomotive engineer.

(5) It is understood and agreed that on any road having, in the opinion of its B. of L. F. & E. Committee, more favorable rules or conditions than above stipulated, such rules and conditions may at the option of such committee be retained in lieu of the above provisions.

(6) All persons hereafter hired as firemen shall be required, in addition showing, in the opinion of the management, reasonable proficiency, to take within stated periods to be fixed by the three years, two examinations to be prepared by management and to be applied to all alike to test their qualifications as firemen. A fireman failing to pass either examination shall have a second trial within three months.

Firemen hereafter hired declining to take or failing to pass either of the examinations provided for in the preceding paragraph shall be dropped from the service.

Promotable firemen who pass the two examinations above referred to shall be required to take an examination for promotion to the position of engineer when they have had three and not more than four years of actual service. Upon passing such promotional examination and meeting all the requirements established by the carrier for the position of engineer, they shall, when there is need for additional engineers, be promoted to such position, and will establish a seniority date as engineer in accordance with the rules contained in the agreements on the individual railroads.

When rules for conduct of examinations for promotion are included in current schedules, such rules shall apply. In the absence of such rules firemen failing to pass will be given a second trial within a period of three months and if they fail to pass on the second trial will be given a third trial within a period of three months.

Promotable firemen declining to take examinations for promotion, or who fail in their efforts to successfully pass the same, shall be dropped from the service.

All promotable firemen now in the service physically qualified, who have not heretofore been called for examination for promotion, or who have not waived promotion, shall be called in their turn for promotion. When so called should they decline to take such examination for promotion or fail to pass as herein provided, they shall be dropped from the service.

(7) It is expressly understood that in making this agreement representatives of the employees do not waive and are in no way prejudiced in the right to request agreements on the individual carriers here represented which will restrict the employment of helpers on other than steam power to promotable men; and it is agreed that this question is to be negotiated to a conclusion with the individual carriers.

(8) This agreement shall become effective February 22, 1941.

Signed at Washington, D. C., this 18th day of February, 1941.

For the Carriers:

Southeastern Carriers' Conference Committee
C. D. MACKAY, *Chairman*
C. D. MACKAY
H. A. BENTON
C. G. SIBLEY
Committee Members

For the Employees:

Brotherhood of Locomotive Firemen and Enginemen
D. B. ROBERTSON, *President*
Brotherhood of Locomotive Firemen and Enginemen's Committee
W. C. METCALF, *Chairman*

"Supplementary Agreement Effective February 22, 1941, to the agreement between The Norfolk Southern Railroad Company and The Brotherhood of Locomotive Firemen and Enginemen dated September 1, 1928.

The purpose of this supplementary agreement is to incorporate as a part of the agreement dated September 1, 1928, between the Norfolk Southern Railroad Company and The Brotherhood of Locomotive Firemen and Enginemen the agreement reached in mediation and covered by the National Mediation Board Docket Case, No. A-905, which agreement reads as follows:

"(1) On each railroad party hereto the proportion of non-promotable firemen, and helpers on other than steam power, shall not exceed fifty per cent in each class of service established as such on each individual carrier. This agreement does not sanction on which non-promotable men are not now employed.

(2) The above percentage shall be reached as follows:

(a) Until such percentage is reached on any seniority district only promotable men will be hired.

(b) Until such percentage is reached on any seniority district all new runs and all vacancies created by death, dismissal, resignation or disqualification shall be filled by promotable men. A change in the starting time of the same run or job will not be considered as constituting a new run.

(3) Except as provided in items (2) (a) and (2) (b) men now holding seniority as firemen, or helpers on other than steam power, shall be permitted to exercise seniority in accordance with their seniority and the rules of their respective schedules.

(4) It is understood that promotable firemen, or helpers on other than steam power, are those who are in line for promotion under the present rules and practices to the position of locomotive engineer.

(5) It is understood and agreed that on any road having, in the opinion of its B. of L. F. & E. Committee, more

vorable rules or conditions than above stipulated, such les and conditions may at the option of such committee be tained in lieu of the above provision.

(6) All persons hereafter hired as firemen shall be re- uired, in addition to showing, in the opinion of the manage- ent, reasonable proficiency, to take within stated periods be fixed by management, but in no event to extend over period of more than three years, two examinations to be repared by management and to be applied to all alike to st their qualifications as firemen. A fireman failing to ass either examination shall have a second trial within hree months.

Firemen hereafter hired declining to take or failing to ass either of the examinations provided for in the preced- ng paragraph shall be dropped from the service.

Promotable firemen who pass the two examinations above eferred to shall be required to take an examination for pro- otion to the position of engineer when they have had three nd not more than four years of actual service. Upon pass- ng such promotional examination and meeting all the re- uirements established by the carrier for the position of ngineer, they shall, when there is need for additional ngineers, be promoted to such position, and will establish seniority date as engineer in accordance with the rules ontained in the agreements on the individual railroads.

When rules for conduct of examinations for promotion are included in current schedules, such rules shall apply. In the absence of such rules firemen failing to pass will be given a second trial within a period of three months and if they fail to pass on the second trial will be given a third rial within a period of three months.

Promotable firemen declining to take examinations for romotion or who fail in their efforts to successfully pass he same, shall be dropped from the service.

All promotable firemen now in the service physically ualified, who have not heretofore been called for examina- ion or promotion, or who have not waived promotion shall e called in their turn for promotion. When so called should they decline to take such examination or promotion

or fail to pass as herein provided, they shall be dropped from the service.

(7) It is expressly understood that in making this agreement representatives of the employees do not waive and are in no way prejudiced in the right to request agreements on the individual carriers here represented which will restrict the employment of helpers on other than steam power to promotable men; and it is agreed that this question is to be negotiated to a conclusion with the individual carriers.

(8) This agreement shall become effective February 22, 1941."

The committee representing the firemen requested that paragraphs 1 to 4 of the Mediation Board agreement quoted above be included as a part of this supplementary agreement as provided for in paragraph 5 of said agreement.

The definition and application of the phrases "—each class of service established as such—" contained in the first sentence of paragraph 1 as that the following constitute the classes of service to which paragraph 1 applied:

Passenger
Local Freight
Through Freight
Work, Ballast and Construction
Yard

The provision of paragraph 2 (b) is understood and agreed to mean that not in excess of 50 percent non-promotable men will be assigned to any class of service on any seniority district.

EXAMPLE 1

In case of only one assignment, in any class of service, on any seniority district, and such assignment is filled by a non-promotable fireman, in the event of the death, dismissal, resignation or disqualification of such non-promotable firemen the assignment would then be filled by a promotable fireman.

EXAMPLE 2

In case of 4 assignments in any class of service on any seniority district filled by one promotable and 3 non-promotable firemen, in the event of the death, dismissal, resignation or disqualification of one of the non-promotable firemen, the assignment would then be filled by a promotable fireman.

It is understood and agreed that the phrase "—non-promotable fireman—" carried in paragraph 1 of the above quoted agreement refers only to colored firemen.

It is agreed that promotable firemen now in the service who are physically qualified and not otherwise restricted, who have heretofore been called for examination for promotion and failed, or who have waived promotion, will be called for examination for promotion between May 1 and May 15, 1942. In the event such firemen fail to pass examination for promotion, or waive examination, their seniority as firemen shall not be affected.

NORFOLK SOUTHERN RAILROAD COMPANY,
M. S. HAWKINS and L. H. WINDHOLZ,
Receivers.
(Signed) By J. C. POE,
Assistant to General Superintendent.

Accepted for the Firemen:
(Signed) G. M. DOBSON,
General Chairman,
Brotherhood of Locomotive Firemen and Enginemen.

Raleigh, N. C. May 23, 1941.